UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

ARNAUD VAN DER GRACHT DE ROMMERSWAEL, Derivatively on Behalf of RENT-A-CENTER, INC., Plaintiff, v. MARK E. SPEESE, J.V. LENTELL, JEFFERY M. JACKSON, STEVEN L. PEPPER, MICHAEL J. GADE, LEONARD H. ROBERTS, RISHI GARG, ROBERT D. DAVIS, GUY J. CONSTANT, PAULA STERN, JPMORGAN CHASE BANK, N.A., and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., Defendants, -and- RENT-A-CENTER, INC., a Delaware corporation, Nominal Defendant.	Case No. VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT FOR BREACH OF FIDUCIARY DUTY, WASTE OF CORPORATE ASSETS, UNJUST ENRICHMENT, AIDING AND ABETTING, AND DECLARATORY JUDGMENT DEMAND FOR JURY TRIAL

Plaintiff Arnaud van der Gracht de Rommerswael, by his undersigned counsel, submits this Verified Stockholder Derivative Complaint on behalf of nominal defendant Rent-A-Center, Inc. ("RAC" or the "Company") against the defendants named herein. Plaintiff alleges the following on information and belief, except as to the allegations specifically pertaining to plaintiff which are based on personal knowledge. This complaint is also based on the investigation of plaintiff's counsel, which included, among other things, a review of public filings with the U.S. Securities and Exchange Commission ("SEC") of RAC and a review of news reports, press releases, and other publicly available sources.

NATURE AND SUMMARY OF THE ACTION

1. This is a stockholder derivative action by plaintiff on behalf of nominal defendant RAC for breach of fiduciary duty, waste of corporate assets, unjust enrichment, aiding and abetting, and declaratory judgment. RAC is one of the largest rent-to-own operations in America. At RAC's stores, customers can rent electronics, appliances, furniture, and other durable items. Customers pay weekly, semi-monthly, or monthly amounts for the rental of durable goods, often with an ability to purchase the product. Customers can also return items to stop paying for their rental. The Company owns approximately 2,600 stores and franchises another approximately 230 stores.

2. In mid-2015, the Company began rolling out a new point-of-sale ("POS") system. This new system was supposed to be a significant upgrade from RAC's previous system, which was between ten and fifteen years old. Previously, the Company had its POS data stored at individual stores. The new system migrated this information to central servers at RAC's headquarters.

3. The Company's POS system handles a number of client-related services, including keeping track of customer records, inventory, pricing, and general customer relationship management. Most importantly, the POS system tracked collection-related activities, which RAC's then-Chief Executive Officer ("CEO"), defendant Robert D. Davis ("Davis"), described as "critical" to RAC's business. In addition, RAC's then-Chief Financial Officer ("CFO"), defendant Guy J. Constant ("Constant"), admitted the change to the Company's stores was significant.

4. Nevertheless, RAC's rollout of the new POS system has been abject failure. Problems with the system immediately began to drag down sales at the stores in which it was adopted. The Individual Defendants, as defined herein, tried to downplay the drag on results as just expected hiccups from a major change in how employees operate and the activity involved in adopting the new POS system. They repeatedly called the negative impact of the POS system as "short-term," even though the system was significantly dragging down the Company's results, including earnings per share ("EPS") by 20% in the fourth quarter of 2015.

5. There was nothing about the damaging effects of the POS system that were "short-term," however. A year later, the problems with the POS system were ballooning out of control, even while the Individual Defendants continued to greenlight its adoption in additional stores. The Company finally revealed the truth about the POS system disaster in October 2016, when discussing its third quarter results. Defendant Davis explained that the POS system at times had complete outages, which prevented RAC from taking electronic payments, including payments by phone.

6. Worse, the customer management and tracking part of the POS system were inoperable. RAC stores call customers hundreds of times a week. The calls are for various different business purposes, i.e., calling customers to remind them of upcoming payments. After

RAC calls a customer about a payment and the customer promises to make one within a certain amount of time, the Company does not call back until that time period has run. Without tracking of these customer calls, RAC could not tell when it could call customers again. The predictable results of these problems were that customers missed payments. With payments past due, customers would return items, increasing RAC's inventory, while decreasing expected cash flow.

7. For the third quarter of 2016, same stores sales fell 12%. Defendants estimated about 7%-8% of that drop was due to POS issues. In addition, the Company stated it "cannot assume additional disruptions will not occur" in the future and that it expected it would take significant time in the future to cure the problems caused by the POS system. The market's reaction was swift and severe. On October 11, 2016, RAC's stock price fell 30% to $9.18, erasing over $196.5 million in market capitalization. As a result, the Company and certain of the Individual Defendants are now defendants in federal securities class action complaints filed in the U.S. District Court for the Eastern District of Texas.

8. The Company's stockholders have finally reached a tipping point with RAC's management and the entrenched, long serving members of the Board of Directors (the "Board"). Engaged Capital, LLC ("Engaged Capital"), which owns nearly 12.9% of the Company's stock, has put forth a slate of its own nominees for the Board. However, stockholders will not be freely able to exercise their choice of directors.

9. Included in the Company's loan agreements is what is known as a "dead hand proxy put." Under the loan agreement, if a majority of the Board changes, the Company's lenders have the right to declare that a change of control has occurred and RAC must immediately payback its indebtedness. The Company has almost $750 million in debt and only $95 million in cash and cash equivalents. Thus, this proxy put will hang over any election, impairing

stockholders free exercise of their vote knowing that electing Engaged Capital's slate runs the risk of RAC having to immediately pay $750 million, without adequate means. The Board members' agreement to the proxy put could only be done in order to entrench themselves just in case such a situation as here arises. The entrance into the proxy put was in breach of the Board's fiduciary duties and its continued deterrence effect is unlawful. Accordingly, in addition to the other remedies detailed herein, plaintiff seeks equitable relief invalidating the proxy put.

JURISDICTION AND VENUE

10. This Court has jurisdiction over all causes of action asserted herein pursuant to 28 U.S.C. §1332 in that plaintiff and defendants are citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs. This action is not a collusive action designed to confer jurisdiction on a court of the United States that it would not otherwise have.

11. This Court has jurisdiction over each defendant named herein because each defendant is either a corporation that conducts business in and maintains operations in this District, or is an individual who has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by the District courts permissible under traditional notions of fair play and substantial justice.

12. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because: (i) RAC maintains its principal place of business in this District; (ii) one or more of the defendants either resides in or maintains executive offices in this District; (iii) a substantial portion of the transactions and wrongs complained of herein, including the defendants' primary participation in the wrongful acts detailed herein, and aiding and abetting and conspiracy in violation of fiduciary duties owed to RAC, occurred in this District; and (iv) defendants have received

substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

THE PARTIES

Plaintiff

13. Plaintiff Arnaud van der Gracht de Rommerswael was a stockholder of RAC at the time of the wrongdoing complained of, has continuously been a stockholder of RAC since May 2015, and is a current RAC stockholder. Plaintiff is a citizen of Belgium.

Nominal Defendant

14. Nominal RAC is a Delaware corporation with principal executive offices located at 5501 Headquarters Drive, Plano, Texas. Accordingly, RAC is a citizen of Delaware and Texas. RAC is a "rent-to-own" operator in North America that leases consumer electronics, appliances, computers, smartphones, and furniture. RAC's customers enter contracts that give them the option to either purchase leased goods or to return the goods and terminate the lease agreement. As of February 21, 2017, RAC had approximately 21,600 employees.

Defendants

15. Defendant Mark E. Speese ("Speese") is the founder of RAC and is the interim CEO and has been since January 2017, Chairman of the Board and has been since October 2001, and a director and has been since 1990. Defendant Speese was also RAC's CEO from October 2001 to January 2014; Vice Chairman from September 1999 to March 2001; President from 1990 to April 1999; and Chief Operating Officer from November 1994 to March 1999. Defendant Speese is also a member of RAC's Finance Committee and has been since at least April 2015. Defendant Speese is a citizen of Texas.

16. Defendant J.V. Lentell ("Lentell") is a RAC director and has been since February 1995. Defendant Lentell was also RAC's Lead Director from April 2009 to January 2014. Defendant Lentell was a member of RAC's Audit & Risk Committee in at least April 2016. Defendant Lentell is a citizen of Kansas.

17. Defendant Jeffery M. Jackson ("Jackson") is a RAC director and has been since March 2007. Defendant Jackson is also the Chairman of RAC's Audit & Risk Committee and has been since at least April 2015. Defendant Jackson is a citizen of Texas.

18. Defendant Steven L. Pepper ("Pepper") is a RAC director and has been since May 2013. Defendant Pepper is a member of the Audit & Risk Committee and has been since at least April 2015. Defendant Pepper is a citizen of Texas.

19. Defendant Michael J. Gade ("Gade") is a RAC director and has been since May 2005. Defendant Gade is a citizen of Texas.

20. Defendant Leonard H. Roberts ("Roberts") is a RAC director and has been since September 2006. Defendant Roberts is a citizen of Texas.

21. Defendant Rishi Garg ("Garg") is a RAC director and has been since March 2016. Defendant Garg is also a member of RAC's Audit & Risk Committee and has been since at least March 2017. Defendant Garg is a citizen of California.

22. Defendant Davis was RAC's CEO from February 2014 to January 2017; a director from November 2013 to January 2017; Executive Vice President, Finance from February 2008 to February 2014; CFO from March 1999 to February 2014; Treasurer from January 1997 to February 2014; Senior Vice President, Finance from September 1999 to February 2008 and Vice President, Finance and Treasurer from September 1998 to September 1999. Defendant Davis began his employment with RAC in 1993. Defendant Davis is named as

a defendant in related securities class action complaints that allege he violated sections 10(b) and 20(a) of the Securities Exchange Act of 1934. Defendant Davis is a citizen of Texas.

23. Defendant Constant served as RAC's Executive Vice President, Finance, CFO, and Treasurer from June 2014 to December 2016. Defendant Constant is named as a defendant in related securities class action complaints that allege he violated sections 10(b) and 20(a) of the Securities Exchange Act of 1934. Defendant Constant is a citizen of Texas.

24. Defendant Paula Stern ("Stern") was a RAC director from December 2008 to June 2016. Defendant Stern was also a member of RAC's Audit & Risk Committee in at least April 2015. Defendant Stern is a citizen of Washington, D.C.

25. Defendant JPMorgan Chase Bank, N.A. ("JPMorgan") is a federally-chartered bank with principal executive offices located at 1111 Polaris Parkway, Columbus, Ohio. Accordingly, defendant JPMorgan is a citizen of Ohio. Defendant JPMorgan serves as the administrative agent under RAC's current Credit Agreement. JPMorgan provided the Company with a $225 million term loan commitment, of which the Company has $186.7 million outstanding.

26. Defendant The Bank of New York Mellon Trust Company, N.A. ("BNY Mellon") is a federally-chartered bank with principal executive offices located at 400 South Hope Street, Los Angeles, California. Accordingly, defendant BNY Mellon is a citizen of California. Defendant BNY Mellon serves as Trustee under the Senior Notes Indenture dated as of November 2, 2010, and the Senior Notes Indenture dated as of May 2, 2013.

27. The defendants identified in ¶¶15-24 are referred to herein as the "Individual Defendants."

DUTIES OF THE INDIVIDUAL DEFENDANTS

Fiduciary Duties

28. By reason of their positions as officers and directors of the Company, each of the Individual Defendants owed and owe RAC and its stockholders fiduciary obligations of trust, loyalty, good faith, and due care, and were and are required to use their utmost ability to control and manage RAC in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of RAC and not in furtherance of their personal interest or benefit.

29. To discharge their duties, the officers and directors of RAC were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the financial affairs of the Company. By virtue of such duties, the officers and directors of RAC were required to, among other things:

(a) conduct the affairs of the Company in an efficient, business-like manner in compliance with all applicable laws, rules, and regulations so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock; and

(b) remain informed as to how RAC conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in connection therewith, and take steps to correct such conditions or practices and make such disclosures as necessary to comply with applicable laws.

30. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as officers and directors of the Company, the absence of good faith on their part, and a reckless disregard for their duties to RAC that the

Individual Defendants were aware or reckless in not being aware posed a risk of serious injury to the Company.

31. The Individual Defendants breached their duty of loyalty and good faith by allowing defendants to cause, or by themselves causing, the Company to engage in the misleading statements while also causing or allowing RAC to continue the disastrous rollout of the new POS system despite known issues with its adoption.

32. The Individual Defendants, because of their positions of control and authority as officers and/or directors of RAC, were able to and did, directly or indirectly, exercise control over the wrongful acts complained of herein. The Individual Defendants also failed to prevent the other Individual Defendants from taking such illegal actions. As a result, and in addition to the damage the Company has already incurred, RAC has expended, and will continue to expend, significant sums of money.

CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

33. In committing the wrongful acts alleged herein, the Individual Defendants have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired with one another in furtherance of their common plan or design. In addition to the wrongful conduct herein alleged as giving rise to primary liability, the Individual Defendants further aided and abetted and/or assisted each other in breaching their respective duties.

34. During all times relevant hereto, the Individual Defendants, collectively and individually, initiated a course of conduct that was designed to or permitted others to: (i) deceive the investing public, including stockholders of RAC, regarding the Individual Defendants' management of RAC operations; and (ii) enhance the Individual Defendants' executive and directorial positions at RAC and the profits, power, and prestige that the Individual Defendants

enjoyed as a result of holding these positions. In furtherance of this plan, conspiracy, and course of conduct, the Individual Defendants, collectively and individually, took the actions set forth herein.

35. The purpose and effect of the Individual Defendants' conspiracy, common enterprise, and/or common course of conduct was, among other things, to disguise the Individual Defendants' breaches of fiduciary duty, waste of corporate assets, and unjust enrichment and to conceal adverse information concerning the Company's operations, financial condition, and future business prospects.

36. The Individual Defendants accomplished their conspiracy, common enterprise, and/or common course of conduct by causing the Company to purposefully or recklessly release improper statements. Because the actions described herein occurred under the authority of the Board, each of the Individual Defendants was a direct, necessary, and substantial participant in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

37. Each of the Individual Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each Individual Defendant acted with knowledge of the primary wrongdoing, substantially assisted in the accomplishment of that wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

BACKGROUND ON RAC'S BUSINESS MODEL

38. RAC operates as a rent-to-own company. Through its stores, RAC provides people with the ability to use and enjoy expensive durable items that they normally would not be able to afford by leasing the items to the customer. RAC sets up a payment plan where the

customer will provide RAC with a fixed weekly, semi-monthly, or monthly amount.

39. Unlike normal leases, when a customer rents or leases an item from RAC, he does not need credit. Further, there is no long-term contract. Rather, a customer can purchase the item outright or return it to the store to stop payments. RAC offers three ways to make payments, online, by phone, or in-store.

40. Because the Company serves, as defendant Davis describes, "financially challenged customers," RAC is very active in what it calls its "collection activities." RAC stores make hundreds of calls every week to contact customers in an effort to manage collections. These calls can cover a number of collection-related topics, including reminders that payments are upcoming or attempts to work out plans for past-due payments. Information concerning these phone calls with customers' needs to be tracked for a variety of reasons. One important reason is that when a customer makes a commitment to pay by a certain date during a call, RAC is not permitted to call the customer again until that commitment date passes.[1] Defendant Davis described these collection activities during an October 27, 2016 earnings conference call as a "critical business process" for the Company.

41. The new POS system was supposed to handle these critical business processes. The Company began putting the POS system into stores during the fourth quarter of 2014. Despite years of development, the POS system started with problems. In the Company's 2014 Annual Report on Form 10-K, filed with the SEC on March 2, 2015, RAC stated that certain components of the POS system would not be unutilized and the Company took a $4.6 million impairment charge as a result. As explained in more detail below, though the Individual Defendants tried to downplay the POS system's issues, it was about to cost RAC significantly

[1] Defendant Constant explained this process during Bank of America Merrill Lynch's Leveraged Finance Conference held on November 30, 2016.

more.

THE IMPROPER STATEMENTS

42. RAC consistently claimed that the drop in results due to the disastrous POS system rollout was one-time issue that would quickly correct itself. This was not the case. As the Company continued to rollout the new POS system, the issues with the system became worse, as did RAC's financial results. The truth was that the POS system performed extremely poor, including complete outages; that the Company could not commit to there being no future disruptions; and that the POS system issues would continue to harm RAC for the foreseeable future.

43. The improper statements began with Company's press release it issued on July 27, 2015. The press release entitled, "Rent-A-Center, Inc. Grows Consolidated Same Store Sales by 7.5 Percent and Achieves 1.4% Positive Same Store Sales in the Core U.S. Segment." The press release highlighted the POS system as one of the initiatives that RAC was focusing on and that it was now in 150 stores. The press release did not disclose any of the problems with the POS system or the harm it was causing the Company, though it did admit that general and administrative expenses increased $1.6 million due in part to increased technology costs. The press release reiterated previous guidance that EPS for the fourth quarter of 2015 would be up over 20%. The press release stated:

> **Progress on initiatives:**
>
> - Sourcing & Distribution - all five distribution centers are fully operational and we expect to see $25 to $35 million of annual run-rate product cost savings by the end of 2015. The income statement benefit of these savings is expected to be fully realized by the end of 2016.
>
> - Flexible Labor - our new model has now been introduced in approximately 800 Core U.S. locations, and remains on track to generate $20 to $25 million of annual run rate savings by mid-2016

- Smartphones - smartphones were approximately 9.0 percent of Core U.S. total store revenues, losses were down sequentially, and contribution margin of the category is approximately 40 percent and improving

- Pricing - we continue to transition from our historical, cost-based pricing model to a data-driven, market-responsive model in the Core U.S. segment

- ***New point-of-sale system - the pilot has been expanded to approximately 150 stores***

- Acceptance Now - our online approval engine was deployed to 7 key retail partner websites, and we have implemented the cascade/approval waterfall or retail partner point-of-sale integration to over 200 existing locations. Since we took advantage of the opportunity to grow these channels in the first half of the year, we now plan to rollout approximately 500 Acceptance Now direct locations by year end

* * *

Other

General and administrative expenses increased by $1.6 million partially due to the increased technology cost associated with implementing our strategic initiatives and higher incentive cost.

* * *

2015 Guidance

Consistent with our original 2015 guidance, we expect EPS in Q3 to be down more than 10 percent year over year, ***and Q4 to be up more than 20 percent***. This equates to Q3 EPS in the range of $0.40 to $0.46, and Q4 EPS of $0.63 to $0.72. These projections now equate to full year 2015 guidance of $2.05 to $2.20.

44. On July 28, 2015, the Company also held an earnings conference call with analysts and investors. Defendant Davis continued to highlight the new POS system, claiming that it would "provide [RAC] with tools to better serve [its] customers." In particular, defendant Davis stated:

> Regarding our new point-of-sale system, the pilot has been expanded with 150 core U.S. stores running the new system exclusively. We expect general deployment of our new POS system to the remainder of our core U.S. RTO stores to be complete by year-end, pending success at specific milestones. ***Our***

new system will provide us with tools to better serve our customers.

45. On August 11, 2015, the Company filed its Quarterly Report on Form 10-Q for the second quarter ended June 30, 2015, with the SEC. In the Form 10-Q, the defendants explained that they were in the process of implementing the new POS system and that it would "extend and improve capabilities for store sales and operations."

46. On October 26, 2015, the Company issued a press release entitled, "Rent-A-Center, Inc. Grows Acceptance Now Location Count by 15 Percent and Consolidated Same Store Sales by 5.2 Percent." In the press release, the Company revealed that it had rolled out the new POS system to 150 stores, 8.5% of what RAC called the "core U.S. stores." The press release stated:

Progress on initiatives:

- Acceptance Now Technology Initiatives - doubled the penetration of online approval via retailer websites as well as the technology to support the seamless application process. Each of these technologies are available in about a third of our staffed locations

- Sourcing & Distribution - all products are flowing through the new supply chain, all DCs have been fully sourced with product, and the initiative remains on track to fully realize $25 to 35 million of annual run-rate income statement benefits by the end of 2016

- Flexible Labor - our new model has been introduced in approximately 2,100 Core U.S. locations, 5,550 new part-time co-workers have joined the Company, and the initiative remains on track to generate $20 to 25 million of annual run rate savings by mid-2016

- Omni-channel initiatives - began pilot of virtual approval on Rentacenter.com and will have full eCommerce capability in 2016

- Smartphones - smartphones were approximately 9.0 percent of Core U.S. total store revenues and the locking software is installed on 65 percent of on-rent phones and virtually all of our new phones

- ***New point-of-sale system - the pilot has been expanded and is now in 8.5 percent of Core U.S. stores***

47. On November 9, 2015, the Company filed its Quarterly Report on Form 10-Q for the third quarter ended September 30, 2015, with the SEC. In the Form 10-Q, the defendants explained that they were in the process of implementing the new POS system and that it would "extend and improve capabilities for store sales and operations."

48. On February 1, 2016, the Company issued a press release announcing results for the fourth quarter and year ended December 31, 2015. In the press release, the Company detailed its expectations for 2016, stating:

- The Company expects to deliver growth in earnings per share assuming:
  - Core U.S. revenue down 4.0% to 6.0% driven by same store sales decline of 1.0% to 3.0% and the impact of store rationalization efforts
  - Acceptance Now revenue of $850 to $900 million
- The Company expects to deliver improved operating profit margin, EBITDA, and free cash flow in both the Core U.S. and Acceptance Now

49. The Company held an earnings conference call with analysts and investors on February 2, 2016, to discuss RAC's results and its projections. During the call, defendant Constant explained that while the Company expected some headwinds from the adoption of the new POS system, based on issues previously observed with the system's adoption, these negative effects would only harm the Company in the "short term." In particular, defendant Constant stated:

> We expect the year-over-year declines in core revenues to the weakest in the first quarter, coming in at approximately $575 million to $590 million, ***as we absorb the short-term impact as seen in tests of the rollout of our new point-of-sale system to our core store network.*** This will result in a projected first quarter year-over-year earnings-per-share decrease of over 20%.

50. In response to a question seeking clarification about the decrease in EPS, defendant Constant stated:

> Yes, that's correct, we expect the EPS to be down more than 20%. It's basically related to revenues in the core business that we think will come in between $575 million and $590 million. What we've seen as we have tested the rollout of our new point-of-sale system is ***we see a pretty short-term impact***, just given the activity associated with putting in new point-of-sale system in the stores.

51. Defendant Constant also stated during the call that the POS system would be in all stores by the start of the second quarter of 2016.

52. Defendant Davis also addressed the POS system rollout during the February 2, 2016 call. Like defendant Constant, defendant Davis stated that the new POS system would only impact the Company for a short period. Defendant Davis claimed that the POS system's troubles were based on simply the distraction of setting it up and getting employees used to a new system. Notably, defendant Davis claimed to have a "very good knowledge of what we see in terms of impact on the stores" while also admitting that the POS system needed "numerous upgrades and additions" thus far. In particular, defendant Davis stated:

> We've tested in 385 locations now, so pretty substantial test and so we ***have a very good knowledge of what we see in terms of the impact on the stores. We've done numerous upgrades and additions*** to the system through the testing process that's improved any of the areas where we were seeing challenges.
>
> No, the commentary is more around just the change that occurs when you're asking people that are operating the point-of-sale system every day to change what they're doing. Even though it's much more intuitive and much easier to use than the old system was, there will be a period of change. And so that distraction that we see for a fairly short period of time is what we factored into the commentary around first-quarter revenue.

53. On February 29, 2016, the Company filed its 2015 Annual Report on Form 10-K with the SEC. The Form 10-K was signed by defendants Davis, Constant, Speese, Gade, Jackson, Lentell, Pepper, Roberts, and Stern. Highlighted in the Form 10-K was the Company's "Technology Investments." The new POS system in particular was explained, which was claimed would "extend and improve capabilities for store sales and operations." The Form 10-K stated:

> Included in our multi-year transformation program are significant investments in new technologies that will enable the strategic programs described above, as well as other initiatives, to improve operations and support business growth. We developed and implemented applications and systems to support our new distribution network, such as a warehouse management system and enhancements to our automated replenishment system. As described above, we have developed a virtual solution for the Acceptance Now transaction. ***We are also in the process of implementing in the stores in our Core U.S. segment our new store information management system and processes that extend and improve capabilities for store sales and operations. We implemented our Enterprise corporate management system which integrates key corporate back-office systems, such as our financial reporting and inventory management systems, as well as collects and consolidates critical business data from all store operations. During 2016, we will begin the work on an integrated financial and human resources enterprise system with an implementation date in the first quarter of 2017***.

54. Defendants David, Constant, Speese, Gade, Jackson, Lentell, Pepper, Roberts, and Stern also recognized the importance of the new POS system. The Form 10-K explained that the POS system would "manage[] key business processes." The Form 10-K stated:

> We are in the process of implementing a new Store Information Management System in all of our Core U.S. rent-to-own stores. We have approximately 385 of our 2,627 Core U.S. rent-to-own stores on the new system as of December 31, 2015, and we expect to complete the roll out to the remaining stores in 2016. ***The Store Information management System manages key business processes in the store such as sales, customer account management, cash management and inventory management and will result in changes to these business processes and related internal controls over financial reporting.***

55. On April 27, 2016, the Company issued a press release entitled, "Rent-A-Center, Inc. Reports First Quarter 2016 Results; Rent-A-Center, Inc. Reports Earnings per Share of $0.47, Reduces Debt by $212 million, and Achieves Consolidated Leverage Ratio of 2.52x." In the press release, the Company admitted that it rolled out the POS system to fewer stores than expected. Though no reason for this delay was stated, the press release claimed that the delay "allowed for implementation of identified system enhancements." The press release stated:

> CORE U.S. first quarter revenues of $584.4 million decreased 7.1 percent year over year primarily due to lower same store sales and the continued rationalization of our Core U.S. store base. ***In addition, the new point of sale***

> ***system was rolled out to fewer locations than expected in the quarter, which allowed for implementation of identified system enhancements***. Gross profit as a percent of total revenue increased 40 basis points and was positively impacted by our pricing and supply chain initiatives, and revenue mix. Labor, as a percent of store revenue, was negatively impacted by sales deleverage and higher health care expenses, partially offset by improved labor productivity, the flexible labor initiative, and lower incentive compensation. Other store expenses, as a percent of store revenue, were negatively impacted by sales deleverage, partially offset by a lower store count, initial improvements in fleet productivity, and lower losses.

56. On April 28, 2016, the Company held an earnings conference call with analysts and investors to discuss its results for the first quarter and future prospects. Defendant Davis discussed that the POS system caused lower sales at the RAC stores in which it was adopted, which caused a delay in further rollout. Defendant Davis claimed that the Company made some unknown "changes" and RAC would again continue the rollout. Defendant Davis stated:

> Last quarter we got into lower core sales in Q1 because of the impact of our new point-of-sale system. During the initial roll out phase, we experienced a greater-than-expected impact of sales so we made the decision to delay the timing of the roll out and address opportunity areas. We have made those changes and have restarted the POS roll out this quarter with the plan to have the system fully implemented by the end of Q3. Today approximately one-third of our core stores are operating this new POS system.

57. On April 29, 2016, the Company filed its Quarterly Report on Form 10-Q for the first quarter ended March 31, 2016, with the SEC. The Form 10-Q again discussed the Company's "technology investments" and, in particular, the POS system rollout. Again, the defendants claimed that the POS system would "extend and improve capabilities for store sales and operations in the stores in our Core U.S. segment." In addition, the Form 10-Q acknowledged that the new POS system would result in significant changes to the Company's internal controls and would manage key business processes. The Form 10-Q stated:

> *Technology Investments.* Included in our multi-year transformation program are significant investments in new technologies that have enabled or will enable the strategic programs described above, as well as other initiatives, to improve operations and support business growth. In 2015, we developed and implemented applications and systems to support our new distribution network, such as a

> warehouse management system and enhancements to our automated replenishment system. We developed a virtual solution for the Acceptance Now transaction. We implemented our Enterprise corporate management system which integrates key corporate back-office systems, such as our financial reporting and inventory management systems, as well as collects and consolidates critical business data from all store operations.
>
> In 2016, we are in the process of implementing our new store information management system and processes that ***extend and improve capabilities for store sales and operations in the stores in our Core U.S. segment***. We are developing and implementing e-commerce capabilities in our Core U.S. segment. We are working on an integrated financial and human resources enterprise system which will be implemented in the first quarter of 2017.
>
> * * *
>
> *Changes in internal controls*. We are in the process of implementing a new Store Information Management System in all of our Core U.S. rent-to-own stores in 2016. ***The Store Information Management System manages key business processes in the store such as sales, customer account management, cash management and inventory management and will result in changes to these business processes and related internal controls over financial reporting***.

58. On July 27, 2016, the Company issued a press release entitled, "Rent-A-Center, Inc. Reports Second 2016 Results." In the press release, defendant Davis admitted that the POS system caused a negative impact on the Company's results, but that "the benefits of the system will play an important role in helping reinvigorate Core revenue in the future…." The press release stated:

> - Core U.S. revenue decreased by 10.6 percent driven by the continued rationalization of our store base and same store sales. Core U.S. same store sales decreased by 6.7 percent driven by the impact and acceleration of the point of sale system rollout, the impact resulting from the ongoing recast of the smartphone category, continued declines in the computer/tablet category, further deterioration in oil affected markets, and merged stores reentering the comp store base
>
> * * *
>
> "Although I am pleased with the progress made in several areas of our transformation, I am disappointed in our top line performance. ***The point of sale implementation negatively impacted Core revenue in the second quarter and reduced our portfolio making it necessary to revise our outlook for the***

> ***year. However, the benefits of the system will play an important role in helping reinvigorate Core revenue in the future*** by enabling eCommerce and unlocking new pricing capabilities," said Robert D. Davis, the Chief Executive Officer of Rent-A-Center, Inc.
>
> Mr. Davis continued, "Despite the challenging top line, we have made good progress on improving gross margins, increasing productivity, Mexico profitability, and reducing our leverage ratio. In addition, the Acceptance Now pipeline is progressing nicely with several national retail partner prospects interested in our model," Mr. Davis concluded.

59. On August 1, 2016, the Company filed its Quarterly Report on Form 10-Q for the second quarter ended June 30, 2016, with the SEC. The Form 10-Q claimed that the POS system was a key component in the Company's growth strategy. The Form 10-Q stated:

> In 2016, we made a deliberate decision to be more disciplined, selective and strategic with our pricing and promotional strategies, which has negatively impacted our same store sales growth but benefited gross margins. ***And, with completion of the implementation of the store information management system in our Core U.S. stores, we will be more prescriptive on pricing so that we can customize pricing elements by region and by product category to ensure our value proposition continues to be relevant to our customers***.

60. In addition, the Form 10-Q stated that the POS system was fully implemented and that it would "extend and improve capabilities for store sales and operations in the stores in our Core U.S. segment."

61. Concerning the Company's internal controls, the Form 10-Q stated:

> *Changes in internal controls*. We completed implementation of a new Store Information Management System in all of our Core U.S. rent-to-own stores in 2016. The Store Information Management System manages key business processes in the store such as sales, customer account management, cash management and inventory management and has resulted in changes to these business processes and related internal controls over financial reporting.

62. The defendants' statements detailed above were improper. Specifically, they failed to disclose myriad of problems with the new POS system, including instances where the entire system suffered outages, and the disastrous repercussions these problems caused on the Company's financial health and results.

TRUTH IS REVEALED

63. On October 11, 2016, the Company issued a press release entitled, "Rent-A-Center, Inc. Announces Selected Preliminary Third Quarter 2016 Financial Information." In this press release, defendants finally disclosed the severity of the new POS system's performance issues and how damaging the system was to the Company and its financials. The press release stated:

> **Preliminary Unaudited Financial Information for Third Quarter 2016**
>
> The Company estimates Core U.S. same store sales for the three months ended September 30, 2016 to be down approximately 12%, and Acceptance Now same store sales to be essentially flat. Core U.S. gross profit, as a percent of total revenue, is estimated to be flat compared to the third quarter of last year as ongoing benefits from the changes made to the Company's sourcing model were offset by a third-quarter clearance event focused on previously-rented product. Diluted earnings per share for the third quarter 2016 on both a GAAP basis and excluding special items are expected to be between $0.05 and $0.15.
>
> ***"Following the implementation of our new point-of-sale system, we experienced system performance issues and outages that resulted in a larger than expected negative impact on Core sales," said Robert D. Davis, Chief Executive Officer of Rent-A-Center, Inc. "While we expect it to take several quarters to fully recover from the impact to the Core portfolio, system performance has improved dramatically and we have started to see early indicators of collections improvement."***

64. On this news, RAC's market capitalization fell from $684 million to $487.6 million, or nearly 30%.

65. On October 27, 2016, the Company held an earnings conference call with analysts and investors. During the call, defendant Davis provided more detail on the problems with the POS system. During this call, for the first time, defendant Davis explained that the pause in the POS system adoption during the first quarter was due to addressing functionality issues, not just employee training and acceptance of the system. In addition, defendant Davis detailed that the POS system is important component of all the key functions in the Company's stores. Defendant

Davis stated:

> Before we discuss our financial performance, I'd like to first explain more about the system issues we have experienced, what we have done to fix the issues, and where we stand today. First, I think it's important to note that the new system supports all key functions in our stores, including not just taking payments like a traditional point-of-sale system but also managing collections, customer records, inventory management, pricing, customer relationship management to name a few.
>
> If you recall, ***we paused the rollout of the system in Q1 so that we could address opportunity areas related to the functionalities of the system*** and its ease of use by our co-workers, because we were seeing a greater-than-expected impact to operating results.

66. Perhaps most frightening, in describing the POS system outages on this same call, defendant Davis stated: "Although the recent instances of system slowness and outages we believe have been less impactful, ***we cannot assume additional disruptions will not occur***."

67. During the call, defendant Constant further described the impact of the disastrous POS system on the Company's financial results. In contrast to previous statements, defendant Constant explained that the decrease in sales was not just due to employee adoption, but functionality issues, stating:

> ...I think of the core same-store-sales decline, about two-thirds of it -- call it 7% to 8% of the decline -- we think was related to the rollout of the new point-of-sale system. Some of that was the absorption factor that we expected as a result of co-workers getting used to the new system and the resulting impact to the portfolio of that absorption. But the remainder is related to the outages that both Robert and I referred to in our comments.

68. Defendant Constant provided yet further background on the harm caused by the POS system during Bank of America Merrill Lynch's Leveraged Finance Conference held on November 30, 2016. In response to a question about "what exactly went wrong," defendant Constant stated:

> The challenge more comes on the collections side, which is also managed by the system. So we could be making hundreds of collections calls every week, in fact, we do in most stores. And when the system is down, we can't be as productive in making those calls because we have to record what the customer says on those

> calls. If they make a commitment, we're not allowed to call them until that commitment date passes, and all that information needs to be held somewhere. And so, when you're trying to make hundreds of calls a day, we might only able to make 150 calls instead of 200 calls a day. And as a result, people tend to fall behind on collections….
>
> And so, as a result we were unable to – we had to do collections more manually, so we could still get through a lot of it, but not to the same extent that we could. And in some instances, we actually couldn't take electronic payments inside the store as well. So, the combination of those two factors impacted revenue in this quarter and caused customers to fall behind, so they had to return the product to us, so that we have to now bill back that portfolio to where it was before.

THE UNJUSTIFIED SEVERANCE

69. As explained above, defendants Davis and Constant made improper statements to the Company's stockholders and pushed the rollout of the POS system despite known problems. These actions were in breach of their fiduciary duty to the Company and caused RAC significant harm.

70. On December 2, 2016, defendant Constant resigned from the Company. Defendant Davis followed him a month later, resigning on January 9, 2017. Despite their breaches of their fiduciary duty, the Board awarded defendants Davis and Constant significant severance benefits.

71. In particular, defendant Constant received: (i) a pro rata bonus calculated based upon his bonus for the year ended December 31, 2016; and (ii) one and one half times the sum of his highest annual rate of salary during the previous twenty-four months. In total, on information and belief, RAC, based upon the Board's approval, paid defendant Constant approximately, $750,000.

72. Defendant Davis received an even more lucrative package. The Board provided defendant Davis with a cash severance of $1.8 million, the vesting of 67,944 options and 14,983 restricted stock units, and COBRA health insurance premium payments and dental plans for

himself and his dependents for a period of twenty-four months.

73. The Board's grant of these amounts to defendants that breached their duty to the Company and caused significant harm was made in bad faith and constitutes waste.

THE ILLEGAL DEAD HAND PROXY PUT

74. Stockholders are rightfully upset about the Company's performance under the Individual Defendants' watch. Since 2015, RAC's stock price has fallen from over $40 a share to under $8 per share, an 80% drop.

75. On February 23, 2017, Engaged Capital announced that it will put forth a slate of five proposed directors for nomination to the Board. Engaged Capital is one of the Company's largest stockholders, owning nearly 12.9% of RAC. Engaged Capital said it is nominating its slate because it lost faith in the leadership of the Company.

76. The steps Engaged Capital can take, however, are limited by the defensive measure put in place by the Board. In particular, the Board put in place in its debt agreements what is known as a "proxy put."

77. RAC currently has outstanding $550 million worth of senior notes. In addition, it has $186.7 million outstanding on a term loan facility with JPMorgan. Under the indenture governing RAC's outstanding senior notes, in the event of a change of control, the Company is required to purchase all of the outstanding notes at 101% of their original principal amount, plus accrued interest to the date of repurchase. BNY Mellon can force RAC to comply with the indenture agreement. In addition, in the event of a change of control, the Company would be considered in default of its senior credit facilities, including the term loan agreement, which would allow JPMorgan to force the Company to pay the amount owed under the loan.

78. Under the senior notes indenture agreement, a change of control includes when a majority of the members of the Board are not "Continuing Directors." A "continuing director" means a member of the Board on the date of the notes issuance or "was nominated for election or elected to the Board with the approval of a majority of the continuing directors who were members of the Board at the time of such nomination or election."

79. The senior credit facility, in which the term loan is a part, has a similar continuing director provision. The credit agreement states that there is a default if "the board of directors of the Borrower shall cease to consist of a majority of Continuing Directors." "Continuing Directors" are the directors at the time of the credit agreement and "each other director of the Borrower, if, in each case, such other director's election nomination for election or appointment to the board of directors of the Borrower is or was recommend or approved by at least a majority of the directors then in office (or duly constituted committee thereof) either who were directors of the Borrower at the date of such election, nomination, or appointment or whose election, nomination or appointment was approved by a majority of such directors."

80. On March 21, 2017, the Board announced that it would nominate defendants Speese, Roberts, and Jackson for the three Class II Director positions to be elected by stockholders at the Company's annual meeting of stockholders. Since the Board is only putting up three directors for election, Engaged Capital states that it will withdraw two of its nominees.

81. The Board did not approve the Engaged Capital slate. Therefore, even if the Engaged Capital directors are elected, they would not be continuing directors under the senior notes indenture agreement or under the credit facility agreement. While the continuing directors would still hold a four to three majority, if anything happened to any of the continuing directors so that one of them could no longer serve on the Board, a change of control would occur under

the senior notes indenture agreement and the Company would owe hundreds of millions of dollars.

82. There is no way RAC could actually pay the amount that it would owe in a change of control. The Company only had $95.4 million in cash and cash equivalents as of December 31, 2016. A change of control would either send RAC scrambling to raise more money or force it into bankruptcy.

83. At a minimum, the price to the Company of stockholders voting in Engaged Capital's slate of directors would be a payment to the lenders and noteholders for waiving the continuing director requirement. It is both wasteful and bad faith for the Board to impose this cost on the Company.

84. Moreover, there can be no assurance that lenders and noteholders will agree to a waiver of the continuing director language for any fee. Indeed, the Company's performance has been abysmal, as described above, and the Individual Defendants have issued a series of improper statements, destroying RAC's credibility. Lenders and noteholders are less likely to want to negotiate with a company and its representatives that are untrustworthy and when financial performance is at its nadir. Thus, the Board has approved a dead hand proxy put that will predictably have the greatest deterrent effect when the likelihood of stockholder efforts to exercise their franchise rights is at its peak.

85. The dead hand proxy put is a disproportionate defensive measure that interferes with the stockholder voting franchise without any compelling justification, and would embed structural power-related distinctions between groups of directors not found in the certificate of incorporation. The dead hand proxy put implicates the doctrine that prohibits a board of directors from entering into contracts or other arrangements that would amount to an abdication

or substantial restriction of the board's power to manage the corporation. The stockholders may be forced to vote for incumbent directors whose policies the stockholders reject because only those directors have the effective power to change them. The dead hand proxy put disenfranchises stockholders by forcing them to vote for incumbent directors or their designees if stockholders want to be represented by a board entitled to exercise its full powers without the threat of financial catastrophe.

THE ADOPTION OF THE DEAD HAND PROXY PUT IS INEXCUSABLE

86. The member of the Board were required to know that they were breaching their fiduciary duties in agreeing the to the dead hand proxy put. In *San Antonio Fire & Police Pension Fund v. Amylin Pharmaceuticals, Inc.,* 983 A.2d 304 (Del. Ch. 2009), the Delaware Court of Chancery recognized that proxy puts "can operate as improper entrenchment devices that coerce stockholders into voting only for persons approved by the incumbent board."

87. Vice Chancellor Stephen P. Lamb explained that a debt instrument with "an eviscerating effect on the stockholder franchise would raise grave concerns":

> In the first instance, those concerns would relate to the exercise of the board's fiduciary duties in agreeing to such a provision. The court would want, at a minimum, to see evidence that the board believed in good faith that, in accepting such a provision, it was obtaining in return extraordinarily valuable economic benefits for the corporation that would not otherwise be available to it. Additionally, the court would have to closely consider the degree to which such a provision might be unenforceable as against public policy.

88. Vice Chancellor Lamb also "highlight[ed] the ***troubling reality*** that corporations and their counsel routinely negotiate contract terms that may, in some circumstances, impinge on the free exercise of the stockholder franchise." As the Court observed, "there are few events which have the potential to be more catastrophic for a corporation" than a default on the company's outstanding debt.

89. The Court highlighted the problem raised when boards of directors provide corporate creditors with contractual rights whose exercise undermines the core franchise rights of the corporate stockholders. In this regard, the Court cautioned boards that "when negotiating with rights that belong ... to the stockholders (i.e., the stockholder franchise), [the board] must be ***especially solicitous*** to its duties," and those upon whom the board relies must be "***especially mindful*** of the board's continuing duties."

90. In a subsequent opinion in the same case, Vice Chancellor John W. Noble reiterated that the offending provisions of the debt instruments "deterr[ed] the stockholders from nominating and electing directors of their choosing." Accordingly, the Court held that "significant and substantial benefits unquestionably accrued" to the stockholders as a result of the removal and limitation of the "influences on the voting calculus" caused by the proxy put provisions. As then-Chancellor and now-Chief Justice Leo E. Strine, Jr. also held in *Kallick v. Sandridge Energy, Inc.*, 68 A.3d 242 (Del. Ch. 2013), "[s]uch contracts are dangerous," and the burden is therefore on the board to explain itself.

91. The message of the Court of Chancery's 2009 *Amylin* decision is clear. Unless the Board believed in good faith that it was receiving extraordinary consideration specifically in exchange for the dead hand proxy put, it should not have agreed to its inclusion.

92. The Company issued the senior notes in November 2010 and Mary 2013, one year and four years after the *Amylin* decision, respectively. The Board kept the dead hand proxy put into the credit agreement despite amending it in July 2011, two years after *Amylin*, and March 2014, five years after *Amylin*.[2] Notably, the market for debt during those times was very favorable and RAC's stock price was considerably higher than it is now. In fact, in the press

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[2] Major amendments to the credit facility occurred on July 2011 and March 2014. Less major amendments occurred in April 2012, February 2016, and September 2016.

release announcing the July 2011 amendment, defendant Davis stated, "we expect an approximate 100 basis point improvement in interest rates on the new credit facility as compared to the prior facility." At the time of the March 2014 amendment, the Company put out a press release stating: "Today, the Company entered into a larger, new $900 million senior credit facility, consisting of a $225 million term loan and a $675 million revolving credit facility. With the larger facility, ***the Company expects to access a larger pool of capital while lowering the average cost of indebtedness to the Company***." As such, despite the Chancery Court's warning in *Amylin*, there is no such evidence here that the Board received, or negotiated for, extraordinary consideration.

93. JPMorgan and BNY Mellon aided and abetted the Board's breach by including a contractual provision that they knew or should have known was invalid. After *Amylin*, the debt community was put on notice that entering into dead hand proxy puts would likely violate directors' fiduciary duties unless the borrower was aware of and extracted significant concessions in exchange for agreeing to such provisions. JPMorgan and BNY Mellon nonetheless allowed the loan agreement, which included no such concessions, to include the dead hand proxy put. Thus, JPMorgan, noteholders, and BNY Mellon have no justifiable expectation that the dead hand proxy put is enforceable.

94. Accordingly, plaintiff seeks immediate injunctive relief declaring the dead hand proxy puts null and void and ordering the Board to approve the Engaged Capital slate.

DAMAGES TO THE COMPANY

95. As a result of the Individual Defendants' improprieties, RAC disseminated improper, public statements concerning the POS system rollout. These improper statements have devastated RAC's credibility as reflected by the Company's $938.4 million market capitalization

loss.

96. RAC's statements also damaged its reputation within the business community and in the capital markets. In addition to price, RAC's current and potential investors consider the Company's ability to accurately predict and guide the public about its financial results and implement major initiatives. RAC's ability to raise equity capital or debt on favorable terms in the future is now impaired. In addition, the Company stands to incur higher marginal costs of capital and debt because the improper statements and misleading projections disseminated by the Individual Defendants have materially increased the perceived risks of investing in and lending money to the Company. Further, if the Company defaults on its debt as a result of the dead hand proxy put, the cost of RAC's borrowing will increase substantially.

97. Further, as a direct and proximate result of the Individual Defendants' actions, RAC has expended, and will continue to expend, significant sums of money. Such expenditures include, but are not limited to:

(a) costs incurred from defending and paying any settlement in the federal securities class action lawsuits;

(b) costs incurred from rolling out the POS system;

(c) lost income from the POS system outages; and

(d) costs incurred from compensation and benefits paid to the defendants who have breached their duties to RAC, including the severance benefits of defendants Davis and Constant.

98. Finally, the Company faces immediate irreparable harm from the potential default and change of control provisions inherent with the triggering of the dead hand proxy put.

DERIVATIVE ALLEGATIONS

99. Plaintiff brings this action derivatively in the right and for the benefit of RAC to redress injuries suffered, and to be suffered, by RAC as a direct result of breaches of fiduciary duty, waste of corporate assets, and unjust enrichment, as well as the aiding and abetting thereof, by the Individual Defendants. RAC is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

100. Plaintiff will adequately and fairly represent the interests of RAC in enforcing and prosecuting its rights.

101. Plaintiff was a stockholder of RAC at the time of the wrongdoing complained of, has continuously been a stockholder since 2015, and is a current RAC stockholder.

102. The current Board of RAC consists of the following seven individuals: defendants Speese, Gade, Jackson, Lentell, Pepper, Roberts, and Garg. Plaintiff has not made any demand on the present Board to institute this action because such a demand would be a futile, wasteful, and useless act, as set forth below.

103. Defendants Speese, Gade, Jackson, Lentell, Pepper, Roberts, and Garg all have refused to approve the nomination and potential election of the Engaged Capital slate, despite the disastrous effects an election of these directors without prior approval would cause. Defendants Speese, Gade, Jackson, Lentell, Pepper, Roberts, and Garg's willingness to have the Company face insolvency as a means of ensuring their continued service on the Board is in breach of their fiduciary duties for which they face a substantial likelihood of liability.

104. Defendants Speese, Gade, Jackson, Lentell, Pepper, Roberts, and Garg breached at least their duty of care in refusing to approve the Engaged Capital slate. Since plaintiff is seeking

injunctive relief in the form of the approval of the Engaged Capital slate, the Company's indemnification clause does not protect a liability finding against defendants Speese, Gade, Jackson, Lentell, Pepper, Roberts, and Garg.

105. In addition, defendants Speese, Gade, Jackson, Lentell, Pepper, and Roberts, six of the seven directors on the Board, agreed to either a credit agreement, an amendment to a credit agreement, or note indenture agreement with a dead hand proxy put. This agreement to the dead hand proxy put was in violation of defendants Speese, Gade, Jackson, Lentell, Pepper, and Roberts' fiduciary duties.

106. In addition, this suit seeks to invalidate the dead hand proxy put. As the proxy put's primary function is to entrench the Board, such an outcome is against the interests of defendants Speese, Gade, Jackson, Lentell, Pepper, Roberts, and Garg, as it protects them as directors of the Company.

107. Defendants Speese, Gade, Jackson, Lentell, Pepper, and Roberts all made improper statements and approved additional improper statements in the Company's public statements, including its SEC filings, concerning the source of RAC's roll out of the POS system and the effects it would have on the Company's results. Because defendants Speese, Gade, Jackson, Lentell, Pepper, and Roberts face a substantial likelihood of liability for making the improper statements, demand upon them is futile.

108. In addition, defendants Speese, Gade, Jackson, Lentell, Pepper, and Roberts permitted the continued rollout of the POS system despite the plethora of errors occurring at the Company during the rollout. These defendants were faced with constant red flags of the issues from the POS system, including sagging sales, delays in rollout, and technical issues. Despite that fact, they permitted the complete rollout, which caused significant problems with RAC's

collection efforts, causing the harm detailed herein. Accordingly, defendants Speese, Gade, Jackson, Lentell, Pepper, and Roberts face a substantial likelihood of liability.

109. Defendants Jackson, Lentell, and Pepper were members of the Audit & Risk Committee at the time of the improper statements detailed herein. Pursuant to the Audit & Risk Committee's Charter, the members of the Audit & Risk Committee were and are responsible for reviewing the Company's annual and quarterly financial reports, the Company's risk management practices, and reviewing the integrity of the Company's financial statements and internal controls. Notably, in performing these duties, defendants Jackson, Lentell, and Pepper were required to discuss with management and the Company's independent auditor the annual financial statements, including the disclosures in management's discussion and analysis. Defendants Jackson, Lentell, and Pepper were required to discuss with management and the Company's independent auditor the Company's Form 10-Q ***prior*** to its filing with the SEC. Defendants Jackson, Lentell, and Pepper also were required to discuss with management the Company's major financial risk exposures and "all enterprise risks," which would include the new POS system. Defendants Jackson, Lentell, and Pepper breached their fiduciary duties of loyalty because the Audit Committee permitted the Company to make the improper statements discussed above. Therefore, defendants Jackson, Lentell, and Pepper each face a substantial likelihood of liability for their breaches of fiduciary duties and any demand upon them is futile.

110. The entire Board approved of the wasteful severance payments to defendants Davis and Constant, despite those defendants' breach of fiduciary duty. The Board's decision to grant this unwarranted compensation is not protected by the business judgment rule and constitutes waste. Accordingly, demand upon the Board is futile.

111. Plaintiff has not made any demand on the other stockholders of RAC to institute

this action since such demand would be a futile and useless act for at least the following reasons:

- RAC is a publicly held company with over 53.1 million shares outstanding and thousands of stockholders;
- making demand on such a number of stockholders would be impossible for plaintiff who has no way of finding out the names, addresses, or phone numbers of stockholders; and
- making demand on all stockholders would force plaintiff to incur excessive expenses, assuming all stockholders could be individually identified.

COUNT I

Against the Individual Defendants for Breach of Fiduciary Duty

112. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

113. The Individual Defendants owed and owe RAC fiduciary obligations. By reason of their fiduciary relationships, the Individual Defendants owed and owe RAC the highest obligation of good faith, fair dealing, loyalty, and due care.

114. The Individual Defendants, and each of them, violated and breached their fiduciary duties of candor, good faith, and loyalty. More specifically, the Individual Defendants violated their duty of good faith by consciously failing to prevent to Company from engaging in the unlawful acts complained of herein.

115. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary obligations, RAC has sustained significant damages, as alleged herein. As a result of the misconduct alleged herein, these defendants are liable to the Company.

116. Plaintiff, on behalf of RAC, has no adequate remedy at law.

COUNT II

Against the Individual Defendants for Waste of Corporate Assets

117. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

118. By their wrongful acts and omissions, the Individual Defendants wasted RAC's valuable corporate assets by, among other things, causing the Company to pay improper compensation, bonuses, and other benefits to certain RAC executives who breached their fiduciary duties owed to RAC and its stockholders. RAC received no benefit from these improper payments. As a result, the Individual Defendants damaged RAC and are liable to the Company for corporate waste.

119. Plaintiff, on behalf of RAC, has no adequate remedy at law.

COUNT III

Against the Individual Defendants for Unjust Enrichment

120. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

121. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense and to the detriment of RAC.

122. All the payments and benefits provided to the Individual Defendants were at the expense of RAC. The Company received no benefit from these payments.

123. Plaintiff, on behalf of RAC, seeks restitution from the Individual Defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by these defendants, and each of them, from their wrongful conduct and

fiduciary breaches.

124. Plaintiff, on behalf of RAC, has no adequate remedy at law.

COUNT IV

Against Defendants JPMorgan and BNY Mellon for Aiding and Abetting the Individual Defendants' Breach of Fiduciary Duty.

125. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

126. As alleged above, the members of the Board breached their fiduciary duties to RAC by approving the dead hand proxy put provisions.

127. Defendants JPMorgan and BNY Mellon allowed the Individual Defendants to embed a provision in the loan agreements that defendants JPMorgan and BNY Mellon knew or had reason to know was a breach of the Individual Defendants' fiduciary duties.

128. As a result of defendants JPMorgan and BNY Mellon's aiding and abetting of the Individual Defendants' breaches of fiduciary duty, RAC's stockholders have seen their franchise and voting rights diminished and the Company faces imminent and significant harm so that the Board can entrench itself.

129. Plaintiff has no adequate remedy at law.

COUNT V

Against Defendants for Declaratory Judgment Concerning the Dead Hand Proxy Put

130. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

131. Delaware law entitles stockholders to nominate and elect directors of RAC, free from coercion.

132. Section 141(a) of the Delaware General Corporation Law prohibits contractual

arrangements that commit the board of directors to a course of action that would preclude them from fully discharging their fiduciary duties to the corporation and its stockholders.

133. The proxy put in the loan agreements removes from the board of directors the power to disable the proxy put by approving any new director whose nomination or assumption of office "occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors."

134. The proxy put in the loan agreements impermissibly prevents the Board from exercising their full managerial power and duty to approve nominations of qualified individuals by a stockholder and thereby avoid creating financial penalties that hinder a full and fair election.

135. The proxy put in the loan agreements, irrespective of whether it was the product of arm's-length negotiation, deters any effort by stockholders to elect a majority of new directors of RAC at an annual meeting.

136. The proxy put has a present effect on the stockholders' entitlement to participate in or to support a proxy solicitation and to exercise their fundamental franchise rights. The proxy put has a present and continuing adverse effect upon the stockholders' interests, and makes its claim for invalidation of the provision ripe for adjudication.

137. The existing controversy as to the enforceability of the proxy put is substantial and justiciable because it affects the parties in a concrete manner so as to provide the factual predicate for reasoned adjudication. The controversy is also of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. A declaratory judgment in this matter will conclusively clarify the legal rights and obligations of the parties, and will be of practical assistance to them. The judgment sought "will terminate the controversy" and "remove an uncertainty" regarding the enforceability of the proxy put. *See* 10 *Del. C.* §6505.

138. Plaintiff is entitled to an order declaring that the proxy put in the loan agreements is invalid and unenforceable under Delaware law and severable from the remainder of the loan agreements.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of the Company, demands judgment as follows:

A. Against the Individual Defendants, JPMorgan, and BNY Mellon and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties, waste of corporate assets, and unjust enrichment, and defendants JPMorgan and BNY Mellon's aiding and abetting those breach of duties;

B. Permanently enjoining defendants JPMorgan and BNY Mellon from enforcing the dead hand proxy put;

C. Directing the Board to approve Engaged Capital's slate of directors;

D. Declaring that the dead hand proxy put is invalid, unenforceable, and severable;

E. Directing RAC to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect RAC and its stockholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for stockholder vote, resolutions for amendments to the Company's By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before stockholders for a vote of the following Corporate Governance Policies:

1. a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater stockholder input into the policies and guidelines for Board supervision of RAC's referral practices;

2. a proposal to strengthen RAC controls over public statements; and

3. a proposal to require that the Company retain an independent expert to conduct an annual review of the Company's internal controls over both financial reporting and compliance with federal law, who will report directly to the Board regarding the results of its annual review and any other related matters;

F. Extraordinary equitable and/or injunctive relief as permitted by law, equity, and state statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust on, or otherwise restricting the proceeds of defendants' trading activities or their other assets so as to assure that plaintiff on behalf of the Company has an effective remedy;

G. Awarding to RAC restitution from defendants, and each of them, and ordering disgorgement of all profits, benefits, and other compensation obtained by the defendants;

H. Awarding to plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

I. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: April 3, 2017

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